S.B.CIVIL WRIT PETITION NO.7163/2006

Asha Ram & Ors.
v.
State of Rajasthan & Ors.

Date of Order :: 13th December, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.S.Choudhary, for the petitioners.
Mr. A.K.Singh, for the caveator.

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This petition for writ is directed against the order dated 27.11.2006 passed by learned Additional District Judge No.2, Bikaner in Misc. Appeal No.69/06 setting aside the order dated 16.5.2006 passed by learned Civil Judge (JD) Khajuwala accepting the application preferred by the plaintiff petitioners under Order 39 Rule 1 and 2 CPC.

In brief, the material facts necessary for disposal of this writ petition are as follows:-

The plaintiff petitioners, permanent residents of village 29 KJD, Tehsil Khajuwala, District Bikaner preferred a suit for permanent injunction before learned Civil Judge (JD) Khajuwala for restraining the defendant respondents No.2 and 3 from raising any construction of Sarva Shiksha School building at Murrabba No.185/63, village 29 KJD. According to plaintiff petitioners the Gram Panchayat Gulluwali under resolution No.19 dated 20.10.2002

resolved for construction of Shikshakarmi School Building at Murrabba No.185/51, Chak 29 KJD but the defendant respondents by exerting their political pressure started construction of the school building at Murrabba No.185/63, that is a private land. It is also stated that the land in Murrabba No.185/51 is government land and is situated quite close to the village 29 KJD and is also connected with road whereas the land in Murrabba No.185/63 is at a distant place and is having no road connections and that will cause great inconvenience to the students of the school. Alongwith the suit the plaintiffs also preferred an application under Order 39 Rule 1 and 2 CPC that came to be accepted by order dated 16.5.2006 by issuing a temporary injunction restraining the defendant respondents from raising any construction of school building under Sarva Shiksha Abhiyan at Murrabba No.185/63, Kila No.10, Chak 29 KJD till disposal of the original suit. The trial court found a prima facie case in favour of the plaintiff petitioners and also found the balance of convenience in granting the temporary injunction as prayed. The trial court also held that in event the temporary injunction as prayed be not granted then the same shall cause irreparable injury to the plaintiffs. Being aggrieved by the order dated 16.5.2006 the defendants preferred an appeal and that came to be accepted by order dated 27.11.2006, hence this petition for writ is preferred.

The appellate court while reversing the order passed by the trial court held that there is no prima facie case in favour of the plaintiffs as no right accrues for raising a school building at a place decided by the Gram Sabha. The appellate court also reversed the finding of the trial court with regard to balance of convenience and irreparable injury.

While giving challenge to the order impugned it is contended by counsel for the petitioners that the appellate court has altered the decision of the trial court without reaching at the conclusion that the decision of the trial court is arbitrary, perverse or is not based on sound legal principles. According to counsel for the petitioners the appellate court has also not dealt with the reasons given by the trial court for issuing temporary injunction. It is asserted that the trial court in quite unambiguous terms considered that the land situated at Murrabba No.185/51 is government land and is available for construction of school building. A resolution was also taken in this regard by Gram Sabha whereas the land at Murrabba No.185/63, kila No.10, Chak 29 KJD is a private land and, therefore, construction of a government school building should take place at government land. It is also asserted that the appellate court failed to consider that the trial court failed to consider that the trial court found the balance of convenience in favour of the plaintiff

petitioners on the ground that the land at Murrabba No.185/63 is at quite a distant place and is not connected by road. It was also found by the trial court that there are all chances of happening of some unwanted incidents with students if they be compelled to go at a distant place.

Per contra, it is contended by counsel for the defendant respondents that the order passed by the appellate court is quite reasoned one and is based by judicious application of mind.

Heard counsel for the parties.

It is well settled that an appellate court should not interfere with a decision of a trial court pertaining to issuance of temporary injunction unless such decision is arbitrary, perverse or is not based on sound legal principles. In the instant matter the trial court in quite unambiguous terms on basis of a resolution taken by Gram Sabha and also by taking into consideration the location and situation of the land at Murrabba No.185/51 found a prima facie case in favour of the plaintiffs. It was also found by the trial court that the land at Murrabba No.185/63 is a private land that is of the brother of the defendant Head Master of the School and, therefore, there is a prima facie case in favour of the plaintiffs. The balance of convenience in granting temporary

injunction was also found in favour of the plaintiffs on basis of sound reasons. The appellate court altered the decision of the trial court without giving any reason to consider the decision of the trial court as perverse, arbitrary or contrary to sound legal principles. What it appears from the order impugned is that it is an alternative opinion on basis of material available on record. The appellate court should have not interfered with the order of the trial court if the same is not arbitrary, perverse or is in contravention of sound legal principles. In view of it the order impugned suffers from an error apparent on the face of record.

Accordingly, this petition for writ is allowed. The order dated 27.11.2006 passed by learned District Judge No.2, Bikaner in Misc. Appeal No.69/06, Head Master, Shikshakarmi Vidhyalaya, Chak 29 KJD, Khajuwala, Bikaner & Ors. v. Asharam & Ors., is quashed. The order dated 16.5.2006 passed by learned Civil Judge (JD), Khajuwala, in Civil Misc. Case No.20/05, Asharam & Ors. v. Project Officer & Ors., is restored.

(GOVIND MATHUR),J.

kkm/ps.